

*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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+WRIT PETITION No.7350 of 2005

% Dated: 27-06-2008

Smt. Nirmalamma.

Petitioner

VERSUS

\$ Special Deputy Collector, (LA),
Singoor Project, Sanga Reddy,
Medak District & others.

Respondents

! Counsel for Petitioner: Mr. A. Bichaiah

^Counsel for Respondents 1to4: AGP for Land Acquisition.

Counsel for Respondents 5to7: None

<GIST:

> HEAD NOTE:

? Cases referred

IN THE HIGH COURT OF JUDICATURE,
ANDHRA PRADESH AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY SEVENTH DAY OF JUNE,
TWO THOUSAND EIGHT ONLY

PRESENT:
THE HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.7350 of 2005

Between:

Smt. Nirmalamma

... Petitioner

AND

Special Deputy Collector, (LA),
Singoor Project, Sanga Reddy,
Medak District & others.

... Respondents

Counsel for the petitioner : Sri A. Bichaiah

Counsel for respondents 1to4: AGP for Land Acquisition

Counsel for respondents 5to7: None

This Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.7350 of 2005

ORDER:-

At the interlocutory stage, the writ petition is taken up for hearing and disposal with the consent of the learned counsel for the parties.

This writ petition is filed for a writ of Mandamus to declare the action of respondent No.1 in rejecting the claim of the petitioner for payment of compensation under Award dated 13.02.2005, as illegal. The petitioner sought for a consequential direction to respondent Nos.1 to 4 to refer her claim to the competent civil Court under Sections 18 and 30 of the Land Acquisition Act, 1894 (for short, 'the Act').

The petitioner is the sister of respondent No.5. The property in dispute was owned by the father of the petitioner. The said property was acquired under the provisions of the Act for the purpose of Singoor Project. A sum of Rs.4,91,008=71 Ps was determined as the market value for the said property under award dated 13.02.2005. The claim petition filed by the petitioner for payment of compensation and reference of dispute to the civil Court under Sections 30 and 31 of the Act was rejected by respondent No.1. Feeling aggrieved by the said order, the

petitioner filed the present writ petition.

Respondent No.1 filed a counter-affidavit in which he stated that the petitioner filed an objection petition on 16.11.2004 in response to the notice of award enquiry claiming a share in the acquired property on the ground that she is one of the three children of late S. Chandra Reddy, the original owner of the property, that though a notice was issued on 30.11.2004 fixing 17.12.2004 as the date of enquiry, neither the petitioner nor her counsel, who received the notice on 03.12.2004, appeared in-person nor adduced any documentary evidence, while respondent No.5 and his two sons, namely, respondent Nos.6 and 7 appeared and submitted documentary evidence apart from deposing on 17.12.2004. It is further stated that respondent Nos.5 to 7 deposed that after the death of late Chandra Reddy and his two brothers, the legal heirs partitioned the property and in the said partition an open plot fell to the share of respondent No.5 and he along with his two sons constructed the house with their own earnings and they performed the marriage of the petitioner by spending huge money. He also stated that during the enquiry, the villagers supported the claim of respondent Nos.5 to 7 and that according to the said respondents, the petitioner was born prior to 1950, which disentitles her to claim a share in the property. It was further averred that the panchayat records showed respondent Nos.5 to 7 as the owners of the property bearing house Nos.1-55 and 3-83 and considering all these facts, compensation was paid to respondent Nos.5 to 7. It is also stated that the petitioner filed an objection petition before the Secretary and Senior Civil Judge, District Legal Services Authority on 01.04.2005 for reference of dispute under Sections 18, 30 and 31 of the Act and the said case is numbered as PLC No.23/2005, which is pending.

I have heard Sri A. Bichaiah, learned counsel for the petitioner and the learned Assistant Government Pleader for Land Acquisition. Though Sri Kanthi Narahari filed vakalat for respondent Nos.5 to 7 and his name is shown in the cause list, no one appeared for the said respondents.

Under Section 9 of the Act, the Collector shall issue public notice *inter alia* requiring all persons interested in the land to appear personally or by agent in the enquiry to be held and to state the nature of their respective interests in the land etc.

Under Section 10 of the Act, the Collector requires filing of statements containing interests of the persons in the land etc.

Under Section 11 of the Act, the Collector shall enquire into the objections, if any, which any person interested has stated and he shall make an award in respect of the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of the said compensation among all the persons interested in the land.

Under Section 18 of the Act, if any person interested, who has not accepted the award, may by written application to the Collector, require that the matter be referred for the determination of the civil Court, whether his objection is against the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

Under Clauses (a) and (b) of Proviso to Section 18 (2) such an application shall be filed within six weeks from the date of the

award, if the person is present or represented before the Collector at the time of making the award and in other cases, within two months from the date of service of the notice from the Collector under Section 12 (2) of the Act.

Under Section 30 of the Act, when an amount of compensation is settled under Section 11, if any dispute arises as to the apportionment of the same or as to the persons to whom the same is payable, the Collector may refer such dispute to the decision of the Court.

Section 31 (2) *inter alia* provides that if there is any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted.

In the award proceedings, respondent No.1 considered the rival claims of the petitioner on the one side and respondent Nos.5 to 7 on the other and rejected the objection of the petitioner while accepting the claim of respondent Nos.5 to 7 for compensation. A reading of the provisions of Sections 18 and 30 reveals that while the former Section applies to cases where a person, who is interested in the land, is aggrieved by the award regarding the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested, under the latter provision, if the Collector is satisfied that there is a dispute regarding apportionment of the compensation or the persons to whom the compensation is payable, he on his own will refer the dispute to the civil Court. In cases falling under Section 30 of the

Act, the Collector shall deposit the amount of compensation in the reference Court.

The case of the petitioner is that she is entitled to a share in the compensation. Respondent No.1 applied his mind to the objection petition filed by the petitioner and the claims made by respondent Nos.5 to 7 and was satisfied that respondent Nos.5 to 7 were entitled to payment of compensation. He had accordingly rejected the petitioner's claim and paid compensation to respondent Nos.5 to 7. Thus, in the opinion of respondent No.1 no dispute arose regarding the persons to whom compensation is payable.

Having carefully considered the reasoning given by respondent No.1, who took into consideration various facts including the fact that respondent Nos.5 to 7 are the registered owners of the property and the petitioner is a married sister of respondent No.5, in the present proceedings I refrain from going into the correctness or otherwise of the said reasoning of respondent No.1, because it is for the petitioner to establish her case in the competent forum to claim a share in the compensation. But, for the limited purpose of examining whether respondent No.1 exercised his discretion properly under Section 30 of the Act or not, I am of the view that he has not committed any jurisdictional error in not referring the dispute to civil Court under the said provision, because, in his opinion compensation is payable to respondent Nos.5 to 7 and that hence, no dispute arises between the petitioner and the said respondents.

As noted earlier, while Section 30 vests suo motu power in the Collector for reference regarding the dispute as to the persons

to whom compensation is payable, under Section 18, a person interested, who is aggrieved by the award, is entitled to seek such a reference.

Then remains the claim of the petitioner for referring the dispute under Section 18 of the Act. The petitioner, in para 7 of her affidavit, after referring to payment of compensation amount to respondent Nos.5 to 7 by respondent Nos.2 and 3, pleaded that she also applied for reference of dispute under Section 18 of the Act. The petitioner also filed a copy of the application under Section 18 of the Act, which bears the date of 02.03.2005. At the bottom of the application it is mentioned as “through counsel for claimants”. There is no specific denial of this plea of the petitioner in the counter filed on behalf of respondent Nos.1 to 4. If the petitioner filed her application on 02.03.2005, the same is within the time prescribed by Section 18 (2) applying either of the two clauses of (a) or (b) of Section 18 (2). If that be so, respondent No.1 is bound to refer the dispute to the civil Court, notwithstanding the view taken by him while considering and rejecting the objections of the petitioner under Section 30 of the Act. In other words, the discretion available to respondent No.1 under Section 30 is not available to him under Section 18 where the application is found to be filed within the time.

In this view of the matter, the writ petition is disposed of with the following directions:

- 1) Respondent No.1 shall verify from the record whether the petitioner's application under Section 18 was received by his office within the time limit prescribed under Section 18.
- 2) If it is found that the application is received within the

time, he shall refer the dispute to the competent civil Court.

- 3) If respondent No.1 comes to the opposite conclusion, he shall give notice to the petitioner and after giving her/her counsel an opportunity of personal hearing, pass a reasoned order for rejecting her request for reference.
- 4) Respondent No.1 shall complete the whole process indicated above, within a period of eight weeks from the date of receipt of a copy of this order.

As a sequel to disposal of the writ petition, WPMP.No.9800 of 2005 filed by the petitioner for interim relief is disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

Date: 27.06.2008
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